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City of Rocklin
Clerk's Office

May 30, 2008

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HAND DELIVERED

Barbara Ivanusich
City Clerk
City of Rocklin
3970 Rocklin Road
Rocklin, CA 95677-2720

Planning Commission
City of Rocklin
3970 Rocklin Road
Rocklin, CA 95677-2720

Re: Appeal of Planning Commission Action Approving Lowes Project
(File No. DR-2007-05, U-2007-05 and TRE-2008-03)

Dear Ms. Ivanusich and Members of the Planning Commission:

Pursuant to Rocklin Municipal Code section 17.86.050(C), the Town of Loomis appeals the City of Rocklin Planning Commission's May 20, 2008, final actions regarding the approval of the Mitigated Negative Declaration ("MND") for the Lowe's Project. (File No. DR-2007-05, U-2007-05 and TRE-2008-03.) This appeal also applies to the Planning Commission's approval of a Conditional Use Permit and Oak Tree Preservation Plan Permit for the project. It is Loomis' understanding that the Planning Commission deferred a decision regarding Design Review. To the extent the Planning Commission took any final action regarding Design Review, this appeal applies to such action. Enclosed with this administrative appeal is a check from the Town of Loomis for \$2,016 - the fee for filing an administrative appeal.

Loomis' appeal is based upon the City of Rocklin's failure to comply with the legal requirements of the California Environmental Quality Act, Public Resources Code, section 21000 *et seq.* The following provides Loomis' comments on the Initial Study/Mitigated Negative Declaration ("IS/MND") and the basis for this appeal. Loomis reserves the right to supplement these comments prior to this appeal being heard by the City Council.

A. The Initial Study/Mitigation Negative Declaration Fails to Provide an Accurate Project Description

The Initial Study/Mitigated Negative Declaration's ("IS/MND") project description fails to identify the roadway improvements that must be made within Loomis' jurisdiction in order to avoid the project's significant impacts to traffic and to keep the

streets and intersections identified in the IS/MND from deteriorating further in Level of Service ("LOS").

B. The IS/MND Fails to Adequately Analyze and Disclose the Project's Impacts to Global Warming and Greenhouse Gas Emissions

Over the last decade, global warming has become one the most critical environmental problems that humans must confront. Global warming is the subject of intensive international, national and state attention. The State of California recognizes the dramatic consequences of climate change, the impact has and will have for the State and the critical importance of providing leadership in addressing the necessary steps to address the issue.

On June 1, 2005, Governor Schwarzenegger issued Executive Order S-3-05. The Governor's Order sets the following GHG emissions reduction targets for California: by 2010, reduce GHG emissions to 2000 levels; by 2020, reduce emissions to 1990 levels; by 2050, reduce emissions to 80 percent below 1990 levels. The Governor recognized that "California is particularly vulnerable to the impacts of climate change" and that "mitigation efforts will be necessary to reduce greenhouse gas emissions." (Executive Order S-3-05.) As a local agency of the State of California, Rocklin has a responsibility and a duty to address the Project's impacts on GHG emissions and climate change.

Assembly Bill 32, the California Global Warming Solutions Act of 2006, codified at Health & Safety Code section 38500 *et seq.* ("AB 32") is the nation's first mandatory cap on a state's overall greenhouse gas emissions. The Act states:

Global warming poses a serious threat to the economic well-being, public health, natural resources, and the environment of California. The potential adverse impacts of global warming include the exacerbation of air quality problems, a reduction in the quality and supply of water to the state from the Sierra snowpack, a rise in sea levels resulting in the displacement of thousands of coastal businesses and residences, damage to marine ecosystems and the natural environment, and an increase in the incidences of infectious diseases, asthma, and other human health-related problems.

The Global Warming Solutions Act requires the reduction of emissions to 1990 levels by the year 2020, (Health & Safety Code, § 38550).¹ CEQA requires global

¹ CEQA provides an independent basis to combat global warming. SB 97 (2007) requires the Office of Planning and Research to prepare by July 1, 2009, and the Resources Agency to certify by January 1, 2010, guidelines "for the mitigation of greenhouse gas emissions or the effects of greenhouse gas emissions as required by [CEQA], including, but not limited to, effects associated with transportation and energy consumption." (Senate Bill 97 (2007).)

warming affects the "environment" as defined by CEQA² because global warming affects the physical conditions in all regions of California. Because a project that generates greenhouse gas emissions contributes to global warming, this impact must be fully disclosed and analyzed under CEQA. In order to properly analyze a project's climate change impacts, an environmental document must: 1) provide a regulatory and scientific background on global warming; 2) assess the project's contribution to climate change through an emissions inventory; 3) assess the effect of climate change on the project and its impacts; and 4) make a significance determination.

CEQA requires that an agency must find a project may have a significant effect on the environment if (1) a proposed project has the potential to degrade the quality of the environment, curtail the range of the environment, or to achieve short-term, to the disadvantage of long-term, environmental goals; (2) the possible effects of a project are individually limited but cumulatively considerable. "Cumulatively considerable" means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future effects; (3) the environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly." (Pub. Resources Code, § 21083(b); CEQA Guidelines, § 15065.)

CEQA requires that a public agency refrain from approving projects with significant projects with significant environmental effects if there exists feasible alternatives or mitigation measures that can substantially lessen or avoid those effects. (Pub. Resources Code § 21081; see also *Mountain Lion Foundation v. Fish and Game Commission*, *supra*, 16 Cal.4th at p. 134.)

In *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 720, the court stated:

[o]ne of the most important environmental lessons evident from past experiences is that environmental damage often occurs incrementally from a variety of small sources. These sources appear insignificant, assuming threatening dimensions only when considered in light of the other sources with which they interact. Perhaps the best example is air pollution, where thousands of relatively small sources of pollution cause a serious environmental health problem. CEQA has responded to this problem of

² CEQA defines "environment" as "the physical conditions which exist within the area which will be affected by a proposed project, including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance." (Pub. Resource Code § 21060.5.)

incremental environmental degradation by requiring analysis of cumulative impacts.

The IS/MND completely dismisses the project's global warming impacts and GHG emissions. The IS/MND acknowledges that the construction and operation of the project will generate GHG but then concludes that an individual project cannot generate enough GHG emissions to significantly influence global climate change. The IS/MND ignores that the fact that the California Legislature has mandated by law that GHG emissions be reduced to 1990 levels by the year 2020, (Health & Safety Code, § 38550.) The IS/MND even acknowledges that GHG and global warming is a cumulative impact issue, yet then dismisses the impact. (See IS/MND at p. 13.) Even though the Governor has recognized that "California is particularly vulnerable to the impacts of climate change" and that "mitigation efforts will be necessary to reduce greenhouse gas emissions" Rocklin refuses to analyze this project's contribution to GHG and/or mitigate its cumulative impacts to GHG. (See Executive Order S-3-05, June 1, 2005.)

While recognizing that climate change is a concern and that state law mandates a reduction in GHG emissions, Rocklin concludes that it is unable to provide a scientific or regulatory based conclusion regarding the project's contribution to climate change is considerably cumulative. Thus, Rocklin provides no analysis or discussion whatsoever regarding the Project's GHG emissions. (*Id.*) The IS/MND makes no effort to quantify GHG emissions. (IS/MND at p. 13.)

In light of the Governor's Executive Order and the requirement that GHG be significantly reduced by 2020 and even further reduced by 2050, it is incomprehensible that Rocklin, a subdivision of the state, has essentially thumbed its nose at the Governor's Executive Order and refused to even attempt to evaluate the Project's GHG emission and contributions to global warming.

Additionally, there are available mitigation measures that could be incorporated into the project, before it is approved, that could feasibly and substantially reduce the project's air quality impacts to a level of insignificance. Submitted with this comment letter is the California Air Pollution Control Officer's Association's ("CAPCOA") January 2008 report titled *CEQA & Climate Change, Evaluating and Addressing Greenhouse Gas Emissions from Projects Subject to the California Environmental Quality Act.* Appendix B of this report presents 45 pages of potential mitigation measures that could reduce air quality impacts. Many of which could be incorporated into the Lowes project to offset air quality impacts, including GHG emissions. (A copy of this report was also provided to the City of Rocklin during the comment on the Draft EIR for the Rocklin Crossings project.)

C. The IS/MND Fails to Disclose and Analyze the Project's Air Quality Impacts from Construction and Operation

The IS/MND acknowledges that the Project will result in air quality impacts resulting from construction and operation of the project. (IS/MND at p. 11.) The IS/MND, however, fails to quantify these impacts or identify the specific mitigation measures that will be implemented. (*Id.*) The IS/MND states that the City of Rocklin requires project applicants to incorporate into the project description a listing of mitigation measures recommended by the Placer County Air Pollution Control District. The IS/MND, however, let alone the project description fails to identify the specific mitigation measures. Thus, neither the public nor decision makers can be certain as to which, if any mitigation measures will be imposed upon the applicant to ensure that the significant air quality impacts are mitigated to less than significant.

D. The Plans and Previous Documents Relied Upon are Outdated and Do Not Reflect Current Conditions

The IS/MND's analysis for Lowes traffic tiers off studies done for the City of Rocklin's General Plan (April 1991), the Southeast Rocklin Circulation Element Area Plan (1993), the North Rocklin Circulation Element (1994), and the Northwest Rocklin Annexation (Sunset Ranchos) EIR (Oct 2001). These studies relied upon by City of Rocklin are old and outdated, the. In that time Rocklin alone gained 12,000 + people not to mention the surrounding areas (Loomis gained about 350 for comparison).

E. The Traffic Impact Analysis is Flawed

As a result of this project, along with other recent development from the Rocklin, six lanes on Sierra College Boulevard need to extend beyond the Sierra College Boulevard / Taylor Road intersection to Bankhead so as to allow sorting of traffic beyond and not over the railroad tracks.

The IS/MND's analysis of impacts on Brace Road and Rocklin Road is standard traffic modeling and fails to consider the direction that contractors picking up supplies would actually drive. For instance, contractors who work east of Loomis are more likely to take Sierra College Boulevard to Brace Road or Rocklin Road and thence go east as opposed to using the I-80 freeway to get to Horseshoe Bar or Penryn interchange.

F. The IS/MND Fails to Properly Mitigate the Project's Traffic Impacts

The IS/MND states "for intersections that are already operating at LOS D, E, or F without the project, an increase in the volume to capacity ratio (v/c ratio) by 5 percent (0.05) or more is considered a significant impact." (IS/MND at p. 52.) The IS/MND provides no basis for this "threshold" of 0.05. Such threshold is not consistent with the City of Rocklin's General Plan Circulation Element, Policy 13. Additionally, the IS/MND states that this 5 percent increase threshold applies to intersections, but fails to provide or identify a similar threshold to roadway segments.

Despite the IS/MND failure to identify a threshold standard for roadway segments, the IS/MND determines that roadway segments impacted by less than percent are not significant. (IS/MND at pp. 64-65.)

The IS/MND acknowledges that the Project will have significant impact to Sierra College Boulevard between Taylor Road and Granite Drive. (IS/MND at p. 65.) This roadway segment is within both the Town of Loomis and the City of Rocklin. Mitigation Measure XV-1 states:

The project proponents shall be responsible for their proportionate share to widen Sierra College Boulevard between Taylor Road and Granite Drive to four lanes. The project proponent shall pay a traffic impact fee in an amount that constitutes the project's fair share contribution to the construction of the proposed improvement as part of the City's development review process, consistent with the City's CIP program, South Placer Regional Transportation Agency (SPRTA) program, or other applicable funding program. (IS/MND at p. 65.)

The CEQA Guidelines require that if a mitigation measure incorporated into a project may have significant adverse effects on the environment, then the environmental document circulated for public review must analyze such impacts as an integral part of the "whole" project. (CEQA Guidelines, § 15126.4(a)(1)(D).) The IS/MND fails to identify or incorporate any previously completed environmental document for the traffic improvements; or 2) to disclose, analyze and mitigate such impacts on its own terms.

The failure to describe these roadway improvements also results in other violations of CEQA such as: 1) incomplete project description; 2) incomplete description of the environment impacted by the environment; 3) piecemealing environmental review, and deferral of mitigation. Thus, the IS/MND failed to provide the public and decisionmakers information about the project. As such, it is legally inadequate and fails to meet CEQA's requirements.

The IS/MND implies that the City of Rocklin is the jurisdiction with the authority to implement the mitigation measure is misleading as a significant portion of the roadway improvements on Sierra College Boulevard between Granite Drive and Taylor Road is within the Town of Loomis. The IS/MND provides no information that the Town of Loomis has any plans or intent to implement this improvement or the timing of such improvement. The fact that that Loomis is not a member of SPRTA that may receive the mitigation fees creates a problem. There is also no information in the IS/MND that SPRTA or Rocklin has obligated itself in any way to turn over traffic improvement fees for this project over to the Town of Loomis, which is not a member of SPRTA.

The IS/MND or EIR must be revised to explain how the City of Rocklin intends to carry out traffic improvements in the Town of Loomis, especially where 1) the City of Rocklin does not control the JPA that may receive the traffic mitigation fees, and 2) the Town of Loomis is not a member of SPRTA. Absent such information, the IS/MND's

assertion that impacts to this roadway segment will be mitigated is not reliable and not supported by substantial evidence.

G. The IS/MND Fails to Mitigate the Project's Cumulative Traffic Impacts

The IS/MND concludes that the project's cumulative impacts to transportation and circulation are less than significant at the intersections of Pacific Street/Rocklin Road, Sierra College Boulevard/Rocklin Road and Taylor Road/Horseshoe Bar Road are less than significant as the increase in traffic is less than the 5 percent threshold. (IS/MND at p. 64.) The IS/MND makes the similar finding for the impacts roadway segments of Sierra College Boulevard between Granite Drive and Rocklin Road and between Rocklin Road and El Don Drive. (*Id.* at pp. 64-65.)

Cumulative impacts to the already impaired roadway segments and intersections are dismissed in the IS/MND. A lead agency must find that a project may have a significant effect on the environment and must prepare an EIR if the project's potential environmental impacts, although individually limited, are cumulatively considerable. (Pub. Resources Code, § 21083(b); CEQA Guidelines, § 15065(c); see *San Bernardino Valley Audubon Society v. Metropolitan Water District* (1999) 71 Cal.App.4th 382, 398.) The Fifth District Court of Appeal has found that "[t]he relevant question to be addressed in the EIR is not the relative amount of precursors emitted by the project when compared with preexisting emissions, but whether *any additional amount of precursor emissions should be considered significant in light of the serious nature of the ozone problems in this air basin.*" (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 781, emphasis added.) The Fifth District concluded that the more severe the existing environmental problems are, the *lower the threshold for finding that a project's cumulative impacts are significant.* (*Id.*, emphasis added.) The IS/MND fails to analyze this issue, and simply dismisses the potentially significant cumulative impacts to these roadway segments and intersections by stating that the percentage of impact is less than 5 percent. (IS/MND at pp. 64-65.) Additionally, it applies this same standard regardless of whether the LOS is D, E, or F. This contradicts the ruling in *Kings County* which stated that the more severe the existing environmental problems, the lower the threshold for finding a project's cumulative impacts are significant.

As previously stated, the IS/MND fails to identify a threshold of significance for cumulative impacts to roadways. It only provides that information as to intersections. Thus, there is no basis for finding a less than significant cumulative impact to the roadway segments with a LOS of D, E, or F. Additionally, the additional traffic to the already impacted intersections will result in cumulative impacts that the IS/MND fails to acknowledge or mitigate.

H. The IS/MND Fails to Disclose the Economic Impact and Urban Decay Analysis

The IS/MND fails to specifically discuss the project's economic impact to Loomis and the potential for urban decay in Loomis resulting from the Project. The proposed

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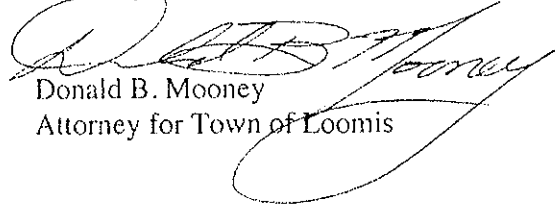
Lowe's store will compete directly with a business in Loomis (Homewood Lumber) and with the proposed Home Depot as part of the Rocklin Crossings project. Homewood Lumber accounts for over \$200,000 a year in sales tax revenue to the Town of Loomis. The other stores in Loomis that will be impacted are Nelthorpe's Appliances, another top sales tax producer in the Town. The IS/MND fails to discuss and analyze the project's potential impacts to Loomis.

I. The IS/MND Fails to Adequately Address the Project's Cumulative Impact.

As discussed above, the IS/MND fails to adequately address the Project's cumulative impacts to GHG and traffic. In assessing the project's cumulative impacts, the CEQA Guidelines require the IS/MND to provide a list of past, present and probable future projects producing related or cumulative. The CEQA Guidelines indicate that the cumulative impact analysis and discussion may rely upon a list of past, present and probable future projects producing related or cumulative impacts, or a summary of projections contained in an adopted general plan or related planning document, or in a prior environmental document which has been adopted or certified. (CEQA Guidelines, § 15130(b)(1).) Any such document must be referenced and made available to the public at a location specified by the lead agency. (*Id.*)

The IS/MND fails to list and identify numerous proposed projects that will impact traffic, noise and air quality such as Clover Valley, Rocklin Crossings, Target, Rocklin 60, movie theaters and existing projects in and around the City of Rocklin. Thus, the IS/MND fails to adequately address and analysis the Project's potentially significant cumulative impacts. This lack of cumulative analysis needs to be addressed.

Sincerely,



Donald B. Mooney
Attorney for Town of Loomis

cc: Perry Beck, Loomis Town Manager
Sherry Abbas, Development Services Manager, City of Rocklin